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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/536,670

05/27/2005

Julius W. Zuehlke

1391/1650

9808

28455 7590 10/31/2008  
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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/31/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/536,670	<b>Applicant(s)</b> ZUEHLKE ET AL.	
	<b>Examiner</b> Carolyn A. Paden	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above claim(s) 44-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1-17-06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

Applicant's election with traverse of Group I in the reply filed on August 1, 2008 is acknowledged. The traversal is on the ground(s) that the claims are unobvious over the cited prior art. This is not found persuasive for the following reasons.

Applicant argues that the apparatus claims are novel over Pentecost. Applicant urged that the specific drum length of Pentecost is different from the claims. This has been considered but is not persuasive. None of the independent claims set forth a specific drum length. Also it is not seen that the drum length is a special technical feature. Applicant argues that there are no spaced apart particulate distributors in the coating apparatus. This has been considered but is not persuasive. The last three lines of the abstract and Figure 4 shows the particulate distributors. Applicant argues that there is no syrup applicator. This has been considered but is not persuasive because feature 48 shows the spray system for liquids. Applicant argues that there is no sloped vibratory pan in Pentecost. This has been considered but is not persuasive. At page 3, paragraph 0035, the powder is described as being introduced by gravity so one of ordinary skill in the art would expect the powder holding tube to be

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sloped. It is appreciated that the tube is not vibrated but vibrating tubes to assist in moving powders is well known in the art.

Applicant argues that Day does not show the specific features of the process. This has been considered and is persuasive but Pentecost provides the specific features of the process, as discussed above. Applicant argues that the specific features of the product, such as a product with various colors and a product with a crunchy coating, are not shown by Day. This has been considered but is not persuasive. It is not seen that the color of the product is a special technical feature. Day describes his color as being speckled in the Abstract. Also Day describes abrasive polishing materials at page 6, line 20. One of ordinary skill in the art would have expected the core of Day to be hard and crunchy because it is an abrasive polishing material.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pentecost (US 2002/0117108).

Pentecost discloses a powder applicator and method for particulate material coating. At paragraph 0017, core material is placed in the drum. Then liquid coating is applied in a spray (see paragraph 0030). Also powdered material is included (see paragraph 0031). Foods and pharmaceutical are contemplated for coating in paragraph 0008. The inclusion of multiple nozzles for coating foods is shown in figure 4. In this case the particular materials in Pentecost are seen as the core material. The powdered materials are seen to be the particulates. The coating time is shown at the end of paragraph 0036. The claims appear to differ from Pentecost in the recitation of the particular core material, the weight of the coated items and the dimensions of the drum. Pentecost teaches the coating of foods and pharmaceutical, in general. It would have been obvious to one of ordinary skill in the art to coat caffeine, confectioneries, tablets and chewing gum with particulate and liquid material would have been an obvious way to flavor or sweeten the

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product core. No unobvious or unexpected result is seen from the application of a soft panned coating to the product of Pentecost. It is appreciated that the product weight is not mentioned but no unobvious or unexpected result is seen from the weight of the coated product. It is appreciated that there is no sloped vibratory pan in Pentecost. At page 3, paragraph 0035, the powder is described as being introduced by gravity so one of ordinary skill in the art would expect the powder holding tube to be sloped. It is appreciated that the tube is not vibrated but vibrating tubes to assist in moving powders is well known in the art. It is also appreciated that a "conical diverter" but a conical diverter is an apparatus limitation, carrying no weight in these process claims. The color of the product would have been within the abilities of one of ordinary skill in the art who desires to provide a particular appearance for a coated food.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be

reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

